IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

RITA H. SELLERS,	)	Case No. 1:14-cv-02354-WDQ
Plaintiff,	)	
v.	)	
JPMORGAN CHASE BANK, N.A.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff, Rita H. Sellers ("Plaintiff" or "Sellers"), through Counsel, hereby submits the following Memorandum is support of her Opposition to Defendant JPMorgan Chase Bank, N.A.'s ("Defendant" or "Chase") Motion to Strike Plaintiff's Demand for Jury Trial ("Motion" or Motion to Strike"). As outlined below, Chase's Motion should be DENIED.

PROCEDUAL SUMMARY

Plaintiff initiated this action against Chase on July 23, 2014. (ECF No. 1). Chase filed a Motion to Dismiss for Failure to State a Claim and for Referral on November 17, 2014 (ECF No. 13) and a Motion to Strike (ECF No. 14). Plaintiff filed a Motion to Amend Complaint on January 8, 2015 (ECF No. 17). The Court granted said motion and the Amended Complaint was deemed filed on February 10, 2015, (ECF No. 22). The Amended Complaint alleges that Chase failed to properly account for two monthly mortgage payments; that Chase breached its servicing contract with Mrs. Sellers by not having proper procedures in place to correctly service her mortgage loan account; and that Chase's default letters and threats of foreclosure were violations of Federal and State laws and statutes. On March 16, 2015, Chase filed an Answer to the Amended Complaint (ECF No. 25), a Motion for Referral based on the violation of the bankruptcy discharge injunction count (Count I) (ECF No. 26) and a Motion to Strike Plaintiff's Demand for Jury Trial, (ECF No. 27). Plaintiff files the instant Memorandum in Support of her Motion Opposing Chase's Motion to Strike Plaintiff's Demand for Jury Trial contained in the Amended Complaint.

ARGUMENT

As an initial matter, defendant admits that the Motion to Strike Plaintiff's Jury Demand is predicated upon the assumption that Defendant's Motion for Referral is granted. (ECF 27-1 at 2). Plaintiff filed her Opposition to Defendant's Motion for referral of Count I. Therefore, if this Court denies Defendant's Motion for Referral then its Motion to Strike must be denied as moot.

Fed. R. Civ. P. 38(b) provides that "[a]ny party may demand a trial by jury of any issue triable of right by a jury" if the demand is made "not later than 10 days after the service of the last pleading directed to such issue." In the case at bar, plaintiff made her demand for a jury trial at the time she filed her Complaint and Amended Complaint. Therefore she is entitled to a jury trial pursuant to Fed. R. Civ. P. 38(b).

Even if the Court were to grant defendant's motion for referral of Count I to the bankruptcy court, it would still not be appropriate to Strike Plaintiff's Jury Demand at this juncture because plaintiff may still be entitled to a jury trial pursuant to *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989) (The Supreme Court found that the defendant had a Seventh Amendment right to a jury trial.) Moreover, Defendant's Motion takes great leaps. Defendant's argument disfigures and mangles the law and the facts of this case by attempting to claim that if this Court refers the case to the bankruptcy court, then plaintiff should automatically be deprived of a jury trial. Defendant fails to cite a single Maryland case that stands for the proposition that "an action for violation of the discharge injunction, is, like an action for violation of the automatic stay, a "core" proceeding[1] which must be considered a "public right."" (*See* ECF 27-1 at 2).

For the reasons set forth above, Plaintiff Rita H. Sellers, respectfully requests that the Court enter an Order Denying Defendant Chase's Motion to Dismiss, and such other and further relief as the Court deems just and proper. In the alternative, Plaintiff requests leave to amend the Complaint.

Respectfully Submitted,

THE KURLAND LAW GROUP

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[1] A violation of a discharge injunction is not listed in § 157(2) (A)-(P) as being a "core" proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of March, 2015, a copy of Plaintiff's Memorandum in Support of her Opposition to Defendant JPMorgan Chase Bank, N.A.'s Motion to Strike Plaintiff's Demand for Jury Trial and a Proposed Order were served *via* this court's electronic filing system on the following:

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